

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Trevor Hackett	Team: Squad #8	CCRB Case #: 202003772	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 12:40 AM	Location of Incident: Fountain Avenue and Liberty Avenue	Precinct: 75	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/01/2020 2:16 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/02/2020 10:24 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Rourke	12040	963727	075 PCT
2. POM Andrew Belcher	01072	960224	NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Burt Antoine	00000	939877	IAB

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Belcher	Abuse: Police Officer Andrew Belcher questioned § 87(2)(b)	
B.POM Andrew Belcher	Abuse: Police Officer Andrew Belcher questioned § 87(2)(b)	
C.POM Andrew Belcher	Force: Police Officer Andrew Belcher used physical force against § 87(2)(b)	
D.POM Andrew Belcher	Force: Police Officer Andrew Belcher used physical force against § 87(2)(b)	
E.POM Thomas Rourke	Abuse: Police Officer Thomas Rourke frisked § 87(2)(b)	
F.POM Thomas Rourke	Abuse: Police Officer Thomas Rourke searched § 87(2)(b)	
G.POM Andrew Belcher	Abuse: Police Officer Andrew Belcher searched the vehicle in which was an occupant.	
H.POM Andrew Belcher	Abuse: Police Officer Andrew Belcher failed to provide § 87(2)(b) with a business card.	
I.POM Thomas Rourke	Abuse: Police Officer Thomas Rourke failed to provide § 87(2)(b) with a business card.	
J.POM Andrew Belcher	Abuse: Police Officer Andrew Belcher refused to provide his shield number to § 87(2)(b)	
K.POM Thomas Rourke	Abuse: Police Officer Thomas Rourke refused to provide his shield number to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

### Case Summary

On May 31, 2020, § 87(2)(b) filed this complaint with the CCRB over email on behalf of himself and his girlfriend, § 87(2)(b).

On May 30, 2020, at approximately 12:40 a.m., § 87(2)(b) was driving her car with § 87(2)(b) headed westbound on Liberty Avenue in Brooklyn when in the vicinity of Liberty Avenue and Fountain Avenue, her vehicle was pulled over by Police Officer Andrew Belcher and Police Officer Thomas Rourke of the 75<sup>th</sup> Precinct. PO Belcher asked § 87(2)(b) and § 87(2)(b) if they had been smoking marijuana in the car (**Allegations A and B – Abuse of Authority**, § 87(2)(g)). PO Belcher ordered § 87(2)(b) and § 87(2)(b) to exit her car and § 87(2)(b) refused. PO Belcher reached through the front driver side window of § 87(2)(b) car, removed her keys from the ignition, unbuckled her seatbelt, and pulled her from her car, causing her to fall to the ground (**Allegation C – Force**, § 87(2)(g)). On the ground, PO Belcher allegedly kept his knee on the back of § 87(2)(b) neck while she was handcuffed (**Allegation D – Force**, § 87(2)(g)). PO Rourke frisked and searched § 87(2)(b) and PO Belcher searched § 87(2)(b) vehicle. (**Allegations E, F, and G – Abuse of Authority**, § 87(2)(g)). § 87(2)(b) asked PO Belcher and PO Rourke for their business cards, which they did not provide (**Allegations H and I – Abuse of Authority**, § 87(2)(g)). § 87(2)(b) asked PO Belcher and PO Rourke for their shield numbers, but the officers did not verbally provide this information (**Allegations J and K – Abuse of Authority**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) was issued a summons for a cracked windshield as a result of this incident (**Board Review 13**).

Body Worn Camera footage was obtained from PO Andrew Belcher, PO Thomas Rourke, PO Julio Casiano, PO Jonathan Cancel, Lieutenant Burt Antoine, PO Carlos Velasquez, PO Danny Cama, PO Christopher Hristopoulos, PO Steven Sike, and PO Andrew Hartmann, all of the 75<sup>th</sup> Precinct. The footage is located in IAs #44-#54 (**Board Review 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11**). Summaries of the footage can be found in IA #55 (**Board Review 12**).

### Findings and Recommendations

**Allegation A – Abuse of Authority: Police Officer Andrew Belcher questioned** § 87(2)(b)

**Allegation B – Abuse of Authority: Police Officer Andrew Belcher questioned** § 87(2)(b)

It is undisputed that PO Belcher asked § 87(2)(b) and § 87(2)(b) whether they had been smoking marijuana in her vehicle.

BWC from PO Belcher shows, at 00:30 on the media player at the bottom of the screen, that PO Belcher pulls over § 87(2)(b) exits the police vehicle and approaches the driver's side of § 87(2)(b) car. At 02:00, PO Belcher says to § 87(2)(b) and § 87(2)(b) "Have you guys been smoking in the car?" § 87(2)(b) denies this and states that the car does not smell of marijuana. PO Belcher responds that the car does smell like marijuana and orders § 87(2)(b) to exit (**Board Review 01**).

§ 87(2)(b) and § 87(2)(b) statements were generally consistent with the BWC. On May 30, 2020, at approximately 12:40 a.m., § 87(2)(b) was driving her car with § 87(2)(b) headed

westbound on Liberty Avenue in Brooklyn and was pulled over by PO Belcher and PO Rourke. § 87(2)(b) acknowledged there was a marble-sized crack on the upper passenger side of her windshield. Both § 87(2)(b) and § 87(2)(b) denied smoking any marijuana prior to the stop and denied that there was any marijuana in the vehicle (**Board Review 14, 15**).

PO Belcher and PO Rourke's statements were generally consistent with the BWC. Aside from the broken windshield, § 87(2)(b) had not committed any other infraction prior to the stop. Both officers detected the odor of marijuana upon approaching the vehicle and did not observe any other indications of marijuana usage. PO Belcher acknowledged asking § 87(2)(b) and § 87(2)(b) whether they had smoked based on the odor he detected (**Board Review 16, 17**).

Before officers may approach a person and ask a pointed question indicative of criminality, there must exist a founded suspicion that criminal activity is present at that moment. People v. De Bour, 40 N.Y.2d 210 (**Board Review 18**).

PO Belcher and PO Rourke both stated that they detected the odor of marijuana emanating from § 87(2)(b) vehicle and that they did not observe any other indications of marijuana usage. However, § 87(2)(b) and § 87(2)(b) both denied that they had smoked any marijuana prior to the stop and denied that there was any in the vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Force: Police Officer Andrew Belcher used force against § 87(2)(b)**

**Allegation D – Force: Police Officer Andrew Belcher used a chokehold against § 87(2)(b)**

It is undisputed that § 87(2)(b) refused numerous orders from PO Belcher to exit her vehicle and that PO Belcher subsequently physically removed her.

BWC from PO Belcher shows, at 02:00 on the media player at the bottom of the screen, § 87(2)(b) tells PO Belcher that she will not exit the vehicle after he orders her to do so. PO Belcher opens the driver's door and orders § 87(2)(b) to exit the vehicle again and § 87(2)(b) refuses. At 02:30, § 87(2)(b) can be heard saying, "If you touch my girl, I'm going to jail, § 87(2)(b) calls 911 and asks for additional officers and a supervisor to respond to the location. At 03:40, PO Belcher continues to order § 87(2)(b) to exit her vehicle. § 87(2)(b) refuses and is still on the phone with 911. PO Belcher reaches into the vehicle, through the driver's side doorway, and removes the keys from the ignition. As § 87(2)(b) vehicle is a Chevy Tahoe, the driver's seat is in an elevated position. At 04:00, PO Belcher grabs § 87(2)(b) left arm and orders her to exit the vehicle. At 04:13, PO Belcher uses both of his arms to grab § 87(2)(b) left arm. Without warning, PO Belcher pulls § 87(2)(b) out of the driver's seat while she is still on the phone with 911. § 87(2)(b) falls from the driver's seat onto the pavement and lands on her left side. § 87(2)(b) pushes herself up and sits on the pavement. § 87(2)(b) repeatedly says that she is hurt. At 04:37, PO Belcher turns § 87(2)(b) on her left side, pulls her arms behind her back, and handcuffs her. At 05:40, PO Belcher and two other officers lift § 87(2)(b) by her arms and put her in a sitting position on the pavement. At no point during the interaction does PO Belcher, or any other officer, make contact with § 87(2)(b) neck (**Board Review 01**).

§ 87(2)(b) statement was generally consistent with the BWC. § 87(2)(b) stated that she received bruising on her left arm and the left side of her ribs and had difficulty moving her left arm as a result of landing on the ground. While on the ground, PO Belcher's knee was on the back of

her neck for “a couple” of seconds as he turned her onto her side. § 87(2)(b) stated her breathing was not restricted, that the pressure was not hard, and that she believed that PO Belcher briefly made contact with her neck to reposition himself. § 87(2)(b) refused medical attention at the scene as she wanted to get home to see her kids. § 87(2)(b) agreed to send photos of her injuries, though none were received (**Board Review 15**).

§ 87(2)(b) stated that upon pulling § 87(2)(b) from the vehicle, PO Belcher placed his knee on the back of § 87(2)(b) neck, where it remained for the entirety of the time § 87(2)(b) was on the ground, which § 87(2)(b) approximated as three to four minutes (**Board Review 14**).

PO Belcher’s statement was generally consistent with the BWC. After initiating the stop, PO Belcher recognized § 87(2)(b) vehicle from a Be On the Look Out (BOLO) alert which identified the vehicle as possibly containing a firearm. PO Belcher did not know if the notice included any additional information and stated that he had seen it earlier that same month. The investigation has not received confirmation of this alert. PO Belcher did not make any additional observation which led him to believe there was a weapon inside the vehicle. PO Belcher cited § 87(2)(b) attitude and the BOLO alert as factors that led him to believe that § 87(2)(b) could pose a safety threat. PO Belcher ordered § 87(2)(b) to exit the vehicle based on the odor of marijuana and said that he used the minimal force necessary to grab § 87(2)(b) arm and pull her from the vehicle. It was not PO Belcher’s intention for § 87(2)(b) to fall to the ground and stated that this would not have happened if § 87(2)(b) had not refused to remove her feet from the footwell of the car. PO Belcher later clarified that he did not recall whether he warned her that he would physically remove her from the vehicle before doing so. PO Belcher did not complete a Threat Resistance and Injury Report (TRI) for this incident (**Board Review 16**).

PO Rourke’s statement was generally consistent with PO Belcher’s and the BWC. Upon approaching the vehicle, PO Rourke recognized it as being associated with a BOLO alert he had previously seen (**Board Review 17**).

Police may order persons out of an automobile during a stop for a traffic violation, People v. Robinson, 74 N.Y.2d 773 (**Board Review 19**). NYPD Patrol Guide, Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life. In all circumstances, any application or use of force must be reasonable under the circumstances (**Board Review 20**).

§ 87(2)(b) Due to § 87(2)(b) numerous refusals to comply with PO Belcher’s orders to exit, PO Belcher would have been justified in using an appropriate amount of force to remove § 87(2)(b) PO Belcher stated that if § 87(2)(b) had just taken her feet out of the footwell of the vehicle, she would not have fallen on the ground. Although PO Belcher issued § 87(2)(b) numerous orders to exit, he did not at any point warn § 87(2)(b) what would happen if she did not exit or that he was about to pull her from the car. PO Belcher failed to take § 87(2)(b) safety into account when he quickly, forcefully, and without warning, pulled § 87(2)(b) from her elevated driver’s seat, causing her to fall to the ground.

§ 87(2)(g) PO Belcher § 87(2)(g) disregarded § 87(2)(b) safety in the manner with which he did so. Furthermore, had he warned § 87(2)(b) that if she did not exit the vehicle, he would be forced to physically remove her, she may have decided to exit the car on her own power. § 87(2)(g)



§ 87(2)(g)

Although § 87(2)(b) and § 87(2)(b) both alleged that PO Belcher placed his knee on the back of § 87(2)(b) neck for varying lengths of time, PO Belcher's BWC footage covers the entirety in which § 87(2)(b) is on the ground and shows that PO Belcher, nor any other officer, contacts § 87(2)(b) neck § 87(2)(g).

**Allegation E – Police Officer Thomas Rourke frisked § 87(2)(b)**

**Allegation F– Police Officer Thomas Rourke searched § 87(2)(b)**

**Allegation G– Police Officer Andrew Belcher searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that PO Belcher conducted a search of § 87(2)(b) vehicle. § 87(2)(b) did not allege that he was frisked or searched, though BWC captures PO Rourke frisk § 87(2)(b) after he accuses PO Rourke of digging in his pockets.

BWC from PO Belcher shows, at 09:20, visible on the media player at the bottom of the screen, PO Belcher enters the car through the front driver's side door. PO Belcher takes § 87(2)(b) purse, which is sitting on the center console, and searches it. PO Belcher searches the center console, the front drivers side seat area and the front driver's side door. At 10:55, PO Belcher searches the front passenger seat area and the glove compartment. At 11:55, PO Belcher searches the rear passenger area. At 13:00, PO Belcher leans over the rear passenger seat and searches the trunk. The footage does not capture any amount of marijuana in the vehicle. At 22:52, PO Belcher uncuffs § 87(2)(b) and gives her a summons for her cracked windshield (**Board Review 01**).

PO Rourke's BWC captures a different angle of the point in time in which § 87(2)(b) was pulled from the vehicle. At 03:05, PO Belcher pulls § 87(2)(b) out of the vehicle. PO Rourke opens the passenger side door and § 87(2)(b) quickly steps out and steps towards PO Rourke. PO Rourke immediately grabs § 87(2)(b) turns him around, and handcuffs him, and brings him to the rear of § 87(2)(b) vehicle. At 05:40, § 87(2)(b) bends down and says, "Don't dig in my pockets." PO Rourke then frisks § 87(2)(b) right legs as well as both of his front pockets. The footage does not capture PO Rourke search § 87(2)(b) (**Board Review 02**).

PO Belcher's statement was generally consistent with PO Rourke's and the BWC. He did not observe PO Rourke frisk or search § 87(2)(b) PO Belcher acknowledged searching the vehicle, and while doing so, found "very small" pieces of green marijuana "bud" on the floor between the seats. He identified the material as marijuana through his training. PO Belcher did not test the material because due to the small amount found, no police action (including issuing a summons) was going to be taken in regards. Aside from the material found between the seats, PO Belcher also observed rolling "blunt" papers. Nothing was found that PO Belcher would issue criminal charges for. He did not recall whether he informed anyone that some amount of marijuana had been recovered (**Board Review 16**).

PO Rourke's statement was generally consistent with the BWC. PO Rourke handcuffed § 87(2)(b) due to a threatening statement he made and because he exited the vehicle quickly and "aggressively" in response to PO Belcher pulling § 87(2)(b) out. While handcuffed at the back of the vehicle, PO Rourke observed § 87(2)(b) reaching down towards his pants. PO Rourke frisked § 87(2)(b) around his waistband and his pants pockets to ensure he did not have anything that could hurt himself or anyone else. The frisk yielded negative results. PO Rourke did not observe any bulges in § 87(2)(b) clothing which led him to believe he was armed and did not recall conducting a search. PO Belcher later informed PO Rourke that he had observed marijuana "crumbs" inside the vehicle while conducting a search (**Board Review 17**).

Lt. Antoine's statement was somewhat consistent with the BWC. Lt. Antoine, who arrived shortly after PO Belcher pulled § 87(2)(b) from her vehicle, believed that officers searched the vehicle based on the odor of marijuana, though he was busy speaking with § 87(2)(b) when this occurred. Lt. Antoine did not recall if he detected the odor of marijuana at the scene and did not recall whether PO Belcher informed him of the results of the search. Lt. Antoine did not recall whether § 87(2)(b) was frisked or searched and was unaware of any BOLO alert which had been issued for § 87(2)(b) vehicle (**Board Review 21**).

The smell of marijuana is sufficient to provide officers with probable cause to search a vehicle and its occupants (People v. Chestnut 43 A.D. 2d 260, 1974) (**Board Review 22**).

PO Belcher and PO Rourke both stated that they detected the odor of marijuana emanating from § 87(2)(b) vehicle. As such, they would have probable cause to have § 87(2)(b) and § 87(2)(b) exit in order to search them and the vehicle for marijuana. Therefore, PO Rourke's frisk of § 87(2)(b) and any possible search, which was not captured on BWC, would have been justified by the odor of marijuana. However, § 87(2)(b) and § 87(2)(b) denied that they had smoked any marijuana or that there was any in the vehicle. Aside from the odor, PO Rourke and PO Belcher did not observe any other indication of marijuana usage when they approached the vehicle. Although PO Belcher stated that he observed marijuana crumbs on the floor of the vehicle he did not test the crumbs or make any documentation of them. BWC does not capture these crumbs and does not capture PO Belcher informing any other officer of this while at the location.

§ 87(2)(g)

**Allegation H – Abuse of Authority: Police Officer Andrew Belcher failed to provide § 87(2)(b) with a business card.**

**Allegation I – Abuse of Authority: Police Officer Thomas Rourke failed to provide § 87(2)(b) with a business card.**

**Allegation J – Abuse of Authority: Police Officer Andrew Belcher refused to provide his shield number to § 87(2)(b).**

**Allegation K- Abuse of Authority: Police Officer Thomas Rourke refused to provide his shield number to § 87(2)(b).**

It is undisputed that § 87(2)(b) requested business cards from PO Belcher and PO Rourke and requested the officers' shield numbers.

BWC from PO Belcher shows, at 23:43, § 87(2)(b) says to PO Rourke and PO Belcher, "Y'all got a card?" PO Rourke says that he does not. PO Belcher says that he can write down his name. At 24:00, § 87(2)(b) takes a picture of PO Belcher's and PO Rourke's name plate and shield. § 87(2)(b) does not ask either officer to provide their shield numbers during the incident (**Board Review 01**).

Both PO Belcher and PO Rourke stated that they had run out of business cards earlier in their tours and as such, were not able to provide § 87(2)(b) with one (**Board Review 16, 17**).

NYPD Patrol Guide, Procedure 203-09, as well as Administrative Code 14-174, state that officers are required to provide their business cards at the request of a member of the public (**Board Reviews 23, 29**).

§ 87(2)(b) requested a business card from the officers at the conclusion of their interaction and neither PO Belcher nor PO Rourke provided him with one as required under The Right to Know Act. It is therefore recommended that **Allegations H and I** be closed as § 87(2)(g)

PO Belcher and PO Rourke allowed § 87(2)(b) to photograph their name plates and shields. However, BWC of the incident shows that § 87(2)(b) did not ask either officer to provide their shield numbers at any point. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

#### **Civilian and Officer CCRB Histories**

- PO Belcher has been a member of service for five years and has been a subject in seven CCRB complaints and 12 allegations, of which one was substantiated:
  - #201808804 involved substantiated allegations of a frisk against PO Belcher. The Board recommended command discipline A, which the NYPD imposed. § 87(2)(g)
- PO Rourke has been a member of service for four years and this is the first CCRB complaint that he has been a subject to.

- § 87(2)(b)

- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

**Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- As of August 3, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**Board Review 26**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- [REDACTED]

Squad No.: 8

Investigator: <u>Trevor Hackett</u>	Inv. Trevor Hackett	12/20/2021
Signature	Print Title & Name	Date

Squad Leader: <u>Ethan De Angelo</u>	IM Ethan De Angelo	12/22/2021
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date